

The Congressional International Anti-Piracy Caucus

Senator Gordon H. Smith, Co-Chair
Senator Joseph R. Biden, Jr., Co-Chair



Congressman Bob Goodlatte, Co-Chair
Congressman Adam B. Schiff, Co-Chair

2006 COUNTRY WATCH LIST

For 2006, the Congressional International Anti-Piracy Caucus will focus on copyright piracy problems in China and Russia. These two countries stand out for two reasons: because of the scope and depth of their piracy problems, which cost the U.S. copyright industries and the millions of Americans who work in these companies \$4 billion in 2005 alone; and because piracy in these countries is largely the result of a lack of political will to confront the problem.

CHINA

China remains awash in pirated versions of American copyrighted products and is a source of pirated product to markets around the world despite the commitments the Chinese authorities have made over the past 10 years to significantly reduce copyright piracy levels. Most recently, the Chinese government made such commitments during meetings of the U.S.-China Joint Commission on Commerce and Trade (JCCT) in April 2004 and July 2005. Unfortunately, piracy levels remain virtually unchanged: the U.S. copyright industries lost an estimated \$2.3 billion in revenue to piracy in China in 2005 alone.

When pirate manufacturing facilities, warehouses, or retail stores are raided by Chinese authorities, the product is seized but the resulting penalty, if any, is nearly always a small fine. Therefore, wrongdoers view such seizures as a cost of doing business, and these occasional interruptions are built into their business model. The Chinese government should close, and keep closed, factories and other facilities engaged in large scale piracy. Production equipment should be seized and destroyed, and China must, consistent with its Trade-Related Aspects of Intellectual Property Rights ("TRIPS") obligations, subject commercial piracy to criminal penalties sufficient to deter illegal activity.

Internet piracy is also growing rapidly in China. Many websites offer unauthorized downloading of U.S. copyrighted files, some for a charge, others for free. Certain China-based Internet service providers (ISPs) have become online warehouses for international pirate syndicates. China must take prompt action against online pirates and those who induce online infringement.

U.S. copyright-based industries also face severe restrictions on their ability to do business in China. It will be difficult to significantly reduce piracy in China if the Chinese do not allow American companies to sell legitimate products to Chinese consumers. China must abolish these restrictions.

RUSSIA

Russia has been on the U.S. government's *Priority Watch List* for nine straight years. During this time, the number of optical disc plants producing and exporting pirated material has grown exponentially – from 2 plants in 1996 to 47 plants as of January 2006. Of that total, nearly forty percent are on Russian military-owned property, rendering them off-limits to independent scrutiny and evaluation. Almost all the optical disc plants that were raided in 2004 and 2005 remain in operation, and their owners have not been held accountable by Russia's criminal justice system. Consequently, the domestic market is saturated with pirated optical discs. U.S. industry estimates that piracy exceeds eighty percent of the market. This unchecked production of pirated material is also saturating the global market, with pirated discs manufactured in Russia turning up in some twenty-seven other countries.

Russia is home to perhaps the largest commercial Internet pirate in the world, "allofmp3.com." This site sells music to consumers worldwide without payment to the rights holders. On several occasions, Russia's prosecutors have declined requests for a criminal investigation of "allofmp3.com." Russia is also the source of countless unsolicited email advertisements (spam) for pirated business software that is sold all over the world.

Russia is now considering a sweeping overhaul of its Civil Code that would annul the country's existing intellectual property law, and enact principles inconsistent with Russia's existing bilateral (U.S. NTR Agreement) and multilateral treaty obligations (Berne Convention and Geneva Phonograms Convention). These new principles are also inconsistent with the TRIPs Agreement, moving Russia even further away from World Trade Organization ("WTO") compliance. Most importantly, the proposed amendments would weaken, not strengthen, on-the-ground enforcement of intellectual property rights in Russia.

All levels of the Russian government have promised to address these problems. To date, however, the government has taken no effective action to deal with plant production, has failed to issue a comprehensive plan of action, and has initiated no legislative reforms to tackle optical disc plants' unauthorized activities.

Last year, the U.S. Congress overwhelmingly passed a joint resolution stating that Russia should lose its trade benefits and not be permitted to join the WTO until these concerns are addressed.

The Congressional International Anti-Piracy Caucus notes that the following countries also face very serious piracy problems. These governments must reverse the growth of piracy in their countries.

MEXICO – Copyright piracy in 2005 remained a serious problem in Mexico with losses to the U.S. economy estimated at \$1.2 billion. There are currently over 50,000 street vendors offering pirated product in Mexico. The United States has received excellent cooperation from Mexico's office of the Attorney General and some other government entities. However, unless the Mexican government addresses the strong market for illegal goods in Mexico, efforts to attack production will be significantly undermined. Increased public awareness of the nature and repercussions of rampant piracy in Mexico is also vitally important.

CANADA – Canada's piracy situation deteriorated in 2005 with increased unauthorized camcording and piracy by "street vendors." Canada has become a source of camcorder piracy, which is quickly distributed via thousands of counterfeit DVDs circulated throughout the world. Pirated entertainment software remains widely available in legitimate retail establishments, many of which also offer console circumvention devices and services. Canada's lax border measures appear to permit the importation of pirated products from East Asia, Pakistan, and Russia. A coordinated national program targeting importation of counterfeit goods at all major Canadian ports of entry is needed. Moreover, Canada must amend its copyright law to implement the World Intellectual Property Organization's ("WIPO") treaties' obligations and to provide incentives to ISPs to offer effective assistance in combating online infringement.

INDIA – Despite India's relatively good copyright law, the U.S. economy in 2005 lost an estimated \$433 million in revenue due to piracy in India. India should improve enforcement, to include increased deterrent sentencing, and to coordinate national efforts. Cable systems in India, which number as many as 40,000, often transmit the U.S. audiovisual industry's product without authorization, affecting the theatrical, home video, and legitimate television markets. Numerous opportunities exist to address piracy in India and advance an anti-piracy agenda, both government-to-government and with public-private partnerships, and we look forward to taking advantage of all such avenues to curb piracy in India.

MALAYSIA – Notwithstanding relatively recent regulations aimed at controlling optical media production, commercial piracy continues in Malaysia in both licensed and unlicensed factories. Both the licensing regime and enforcement apparatus are in need of further improvements. Malaysia remains a leading source of pirated entertainment software produced for export to many major markets, including Asia, Europe, the Middle East, Africa, and Latin America. Free Trade Agreement negotiations can produce progress along these lines, lead to improved customs capabilities and border enforcement measures, and tighten documentation requirements that currently allow for investigations to be thwarted with little effort.